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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

JUDA HUGO CRUZ,

Defendant and Appellant.

A133786

(Mendocino County
Super. Ct. No. SCUKCRCR1010721)

Defendant Juda Hugo Cruz appeals after he pled no contest to transporting methamphetamine (Health & Saf. Code, § 11379, subd. (a)) following the denial of his motion to suppress evidence. (Pen. Code,¹ § 1538.5.) His counsel has filed an opening brief raising no issues and asking this court for an independent review of the record. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant has been informed of his right to personally file a supplemental brief, but he has not done so.

In 2009, in case No. SCWL-CRCR-07-78491, defendant pled no contest to being an accessory to the crime of cultivation of marijuana. (§ 32.) Imposition of sentence was suspended and defendant was placed on three years' probation. Defendant's probation was revoked and the matter was set for a hearing in February, 2010, after a petition was filed alleging defendant had possessed a controlled substance for sale (Health & Saf.

¹ All undesignated statutory references are to the Penal Code.

Code, § 11378) and sold or transported a controlled substance (Health & Saf. Code, § 11379).²

Defendant was charged in case No. SCUK-CRCR-10-10721 with transportation of a controlled substance, methamphetamine (Health & Saf. Code, § 11379, subd. (a)) (count one), possession of a controlled substance, methamphetamine, for sale (Health & Saf. Code, § 11378) (count two), transportation of marijuana (Health & Saf. Code, § 11360, subd. (a)) (count three), and possession of marijuana for sale (Health & Saf. Code, § 11359) (count four). Count two included the allegation that defendant possessed for sale and sold 28.5 grams or more of methamphetamine or 57 grams or more of a substance containing methamphetamine. (§ 1203.073, subd. (b)(2).) The probation violation hearing was held concurrently with the preliminary hearing in case No. SCUK-CRCR-10-10721. The trial court found defendant had violated his probation, subject to any further motions.

Defendant moved to suppress evidence of drugs found in his possession, in the possession of his codefendant, and in the trunk of the vehicle they occupied, and evidence obtained from a subsequent residential search.

The evidence at the hearing on the motion showed that on February 11, 2010, Michael Mattson, a special agent with the Bureau of Narcotics Enforcement in the California Department of Justice, was part of a multiple agency investigation of a number of people for methamphetamine and marijuana trafficking. He was conducting surveillance of an apartment on Tanya Lane in Ukiah.

During the day, Mattson learned a major “buy bust” had taken place. Both marijuana and methamphetamine were involved. Mattson explained that shortly after noon that day, he saw a man later identified as Jose Garcia leave the apartment on Tanya Lane, walk to an Escalade that was driven by one of the targets of Mattson’s investigation, and talk with the female driver through an open window. Just before 1:00

² The petition also alleged defendant had violated section 182.1. The Penal Code does not contain such a section. We note, however, that section 182, subdivision (a)(1) applies to conspiracy to commit a crime.

p.m. Mattson was notified that the buy bust had taken place. Another target of the investigation, Romero Garcia, had earlier also left the apartment and spoken with the driver of the Escalade.

At 1:30 in the afternoon, Mattson saw Jose Garcia come out of the apartment, go over to a Honda that was parked in the street in front of the apartment, lean deeply into the car from the open driver's side window for 30 seconds to a minute, then return to the apartment. There were two men in the Honda, later identified as defendant and his son and codefendant, Hugo Christopher Cruz (Christopher). Mattson knew a team from the buy bust was coming to the apartment to "freeze" it pending the arrival of a search warrant, and he made a radio call asking them to stop the Honda.

A caravan of unmarked law enforcement vehicles was heading toward the apartment when the call to stop the Honda came over the radio. The Honda approached, heading away from the street where the apartment was located. Two of the official vehicles tried to stop the Honda, but the Honda did not stop. The vehicles did not use sirens. The third vehicle in the caravan was driven by agent Matt Knudson. Knudson activated his vehicle's emergency lights—"wigwags" on the front, strobes on all four corners, and a visor LED light with a flashing lamp—and tried to stop the Honda by moving into its lane of traffic. He left enough room for the Honda to get around him if it did not stop. The Honda slowed down, and Knudson made eye contact with Christopher, who was driving, motioned with his hand, and told him to stop. He saw the rear end of the Honda drop in a way that appeared to mean the car had accelerated rapidly, and within seconds heard a collision. The Honda collided with a vehicle driven by a deputy with the Mendocino County Sheriff's Department, who was turning around so he could follow the Honda and stop it.

Officers detained defendant and the driver. For officer safety purposes, agent Jason Parker pat-searched defendant, who had been in the passenger side of the Honda. He felt what seemed to be "small grainy crystal like substances" in defendant's pocket. He asked defendant what it was, and defendant replied, "[W]hat the fuck do you think it

is?” Parker replied that he did not know, and defendant said it was meth. Parker removed a white plastic bag with a white crystal-like substance in it.³

Sergeant Bruce Smith pat-searched the driver and found a golf-ball size object in his jacket, which appeared to Smith to be drugs. A pound of marijuana was found in the trunk of the car.

Christopher testified that he was not aware the vehicles that moved into his lane belonged to law enforcement and that he did not see emergency lights until after the collision. He denied having spoken with someone who came out of the apartment on Tanya Lane.

The trial court denied the motion to suppress. It found that based on the activities at the apartment on Tanya Lane, officers had a basis for a reasonable suspicion that criminal activity was occurring and that the occupants of the Honda might have been involved in that activity; that the pat-search of defendant was justified by concerns of officer safety; that Parker only removed the object in defendant’s pocket after defendant admitted it contained methamphetamine; and that at that point, there was probable cause for a general search of defendant and the Honda.

Pursuant to a plea agreement, defendant pled no contest to count one (Health & Saf. Code, § 11379, subd. (a)), and the remaining counts were dismissed. The trial court sentenced him to the upper term of four years in case No. SCUK-CRCR-10-10721, and granted actual time credits of 604 days and conduct credits of 604 days. (§ 4019.) In the probation violation matter, case No. SCWL-CRCR-07-78491, the court imposed a consecutive subordinate term of eight months, one-third the midterm. (§ 32.) The court initially granted actual time credits of 70 days and 34 days of conduct credits; it later ordered day-for-day conduct credits.

There are no meritorious issues to be argued.

DISPOSITION

The judgment is affirmed.

³ According to testimony at the preliminary hearing, approximately half a pound of methamphetamine was removed from defendant’s jacket pocket.

RIVERA, J.

We concur:

REARDON, Acting P. J.

SEPULVEDA, J. *

* Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.